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Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions

Dear Mr. Feldman,

Alvarez & Marsal ("A&M") welcomes the opportunity to comment on the recent proposal issued by the Federal Deposit Insurance Corporation ("FDIC") regarding its Statement of Policy on Qualifications for Failed Bank Acquisitions (the "Statement"). A&M is a leading global independent professional services firm providing advisory services to the business community for more than 25 years. Our experience has afforded us the unique position to work closely with both private equity firms and banking institutions. This enables us to put forward a balanced and independent comment to the Proposed Statement of Policy on Qualifications for Failed Bank Acquisitions.

A&M recognizes the unprecedented economic environment our country and the world face today. We understand and appreciate the FDIC's need to balance the potential for attracting private investment in banks as part of a wider range of solutions being employed by Federal government. At the same time, it is imperative that the government facilitate a return to long-term stability of the banking sector. The stakes are high.

Clearly a stable, robust banking system is a critical element to ensuring a strong economy, one that would lead to domestic and international growth. We believe the vast majority of investors including private equity firms share this view and implement a responsible investment strategy not only within the financial services arena but in all industry sectors they participate. While we recognize that a small number of investors may seek to make short-term gains with less regard to the wider issues in play, our primary concern is that the FDIC proposal in its current form will deter substantial, potentially available and much needed private investment rather than deter the sole profit motives of a minority of private equity firms.

We recognize that attracting significant capital investment to the banking system is one element of the solution. A second, and equally important, element is strengthening management and implementing operational improvements at the failing institutions to foster long-term stability and a return to profitability. Private equity provides a partnership solution to you for both of these issues. Not only do private investors have the capital resource to invest, they also have a proven track record of improving operational and financial performance of businesses that operate in many sectors including financial services.

Ensuring that the appropriate business plan and management team are associated with the investor's capital plan is crucial. Later, we will discuss suggested requirements associated with the management team that should be sought by the FDIC during the resolution process.

Above all, we firmly believe that the final guidance issued by the FDIC should:

- Provide clarity and eliminate ambiguity;
- Be definitive and consistently applied;
- Ensure that subsequent revisions not be applied retrospectively to prior investments;
- Provide an overall framework that does not place private investors at a significant disadvantage to other market participants; and
- Not diminish the powers of the federal bank regulatory agencies.

Only when private investors know the "rules of the game" will they consider providing the necessary amounts of investment to failing banks needed to assist the FDIC's efforts to stabilize the sector. Failure to provide this clarity will not only result in the FDIC alienating the essential investment from the private sector, but will also result in a missed opportunity to attract first-class operational improvement and turnaround expertise to the banking sector.

I. Investors and institutions subject to the Statement

Clearly this is a unique moment in time when public and private entities can work together to resolve the current banking crisis. There is a broad spectrum of "private capital investors" that have historically made, and will continue to make, investments in insured depository financial institutions. These include dedicated banking funds making minority capital investments and even management teams. It would appear this guidance is primarily concerned with private equity funds.

It is currently ambiguous which classes of investor are subject to the guidance, and a clear definition should be provided.

II. Capitalization requirements

The fifteen percent Tier I Leverage ratio requirement is almost twice the eight percent expected of de novo institutions for the first three years of operation and is three times the five percent requirement of an existing institution to be deemed "well capitalized."

This requirement of the Statement, in its current form, is significant enough to deter many private capital investors from considering investments. The legitimate and responsible private investment vehicle has a duty to the ultimate fund investors to provide a return that is equitable to the risk involved. These higher capital levels will make the economic equation difficult to justify investment under most circumstances.

We firmly believe that providing a level bench mark with respect to capital requirements is not an unreasonable request of the investment community. Therefore, we recommend bringing the capitalization requirements in line with existing legislation. With that said, consideration could be given to a modest capital cushion above the existing requirements until such time as the institution has demonstrated its ability to address other matters highlighted during the resolution process (e.g., operational matters or strengthening management). This overlay would provide a requirement in the Statement that is both obtainable and consistent.

In addition, we recommend heightened requirements on the management team and investor qualifications, and experience as a barrier to entry rather than creating disparity in the capital regulations. This point is explained further below.

III. Minimum investment period

This requirement has a legitimate and necessary place in the Statement. While we believe that the wider investment community would seek to shorten the required investment period, in combination with the additional current proposals, we suggest the adverse reaction to this requirement would be reduced if the FDIC was to relax other requirements (primarily the *Capitalization Requirements* and the *Cross-Guarantee* proposals).

We also recommend that further clarity be provided in subsequent language to address the questions:

- Is there a proposed threshold to this requirement for minority investors or would all investors at any level of ownership be subject to this limitation?
- Would a new buyer during the thee-year investment period be subject to the remaining term of the original three years or would the clock start again for another three years?

IV. Cross-Guarantee

This requirement provides one of the most difficult obstacles for the private investment community, and we believe that in its current form, the requirement will prove unacceptable. Along with the current proposed capital ratios, the cross-guarantee requirement is likely to deter significant investment from private equity.

A number of concerns arise from this requirement; as the Statement currently reads: a private equity fund would be required to place at risk an independent investment, yet at the same time, the fund would not be granted a controlling interest in the bank, nor the opportunity to leverage the bank's lending facilities to other investments it has.

Further, shareholders that do not have interests in both institutions would not be subject to the pledge, yet they could potentially have interest in an institution in which the FDIC ultimately holds a majority stake. This may discourage minority investors from participating in private-capital led transactions and make club deals difficult to structure while adhering to the existing ownership limits. This increased level of complexity in structuring deals may leave many investors questioning the cost / benefit of investing in banks.

Should a cross-guarantee be enforced, it could result in a situation where the stronger institution is weakened to such an extent that there are now two less than "well capitalized" banks rather than one.

As a possible solution, we propose a "special dispensation" approach to any private investor holding only one bank investment to increase the ownership limit in that bank from the current 24.9 percent to a level of controlling interest. For investors holding multiple bank investments we would propose adhering to the existing rules. This would allow funds to put more capital in play. This change in ownership limits for investors with only one bank holding would encourage the investor to strengthen the platform for future growth, and potentially a subsequent roll-up of other failing banks rather than putting funds to work on several institutions that are run on a standalone basis.

V. Source of strength

An additional consideration is to provide alternate sources of strength requirements, which could require the investing fund, as part of the transaction, to hold a reserve at the partnership level. This could be set as a percentage of the transaction value for future capital investment in the invested bank. This approach would provide the investor with a cap to any incremental contribution and ensures the private equity investor does not have unlimited liability to support the bank, especially when the fund does not have control over the institution. A mechanism for releasing this reserve over the investment period can also be implemented as the bank demonstrates an ability to operate with less support and returns to profitability and stability.

With regards a number of the other requirements in the Statement (*Secrecy Jurisdiction, Disclosure Requirements, Prohibition on Extending Credit to Affiliates, Limitations on Certain Bidders, and Transactions with Affiliates and Special Owner Bid Limitation*) we do not have significant objection or comment to these at this time. We would suggest to the FDIC that any adverse reaction to these requirements would be mitigated by substantial and meaningful revisions to the clauses discussed in detail in sections I – V above.

Management team and investor credentials

A&M firmly believes that any relaxation of the capital and cross-guarantee requirements by the FDIC can be balanced against a heightened qualitative requirement of both the management team brought on board by the investor(s) and by the credentials, qualifications and experience in the industry arena of the investor themselves.

The potential investing parties should present to the FDIC the named management team that is intended to join the failing institution, to either replace or strengthen the current management. These individuals should demonstrate a proven track record in the banking industry, at a similar level of complexity and sized institution; their collective experience should very much be aligned to the business plan presented to the FDIC by the investors (i.e., a roll-up strategy should be supported by strong M&A credentials in the banking arena and operational improvements made by strong COO credentials). The management team should be subject to a similar degree of diligence as required for de novo applicants. Further, in order to ensure the management team has a vested interest in the stabilization and success of the institution, certain lock-in clauses could be considered.

A&M recognizes the challenges faced by private equity investors in securing and retaining the services of an experienced and suitable management team during the period prior to investing in a failed institution. During this period, which can last a considerable number of months, the investor would typically refine its investment strategy and the identification of the institution to be acquired. As the investor enters into a transaction process, there is no guarantee of success for their subsequent bid.

Management teams themselves are not likely to be easily locked-in to one investor under these circumstances, and investors are likely to be unwilling to invest significantly in management teams without the guarantee of success. As a solution, we believe the FDIC should give equal and due consideration to a bid that proposes an interim management team. The interim management team should be subject to the same level of diligence by the FDIC and must demonstrate the necessary credentials and qualifications. One of the objectives of the interim management team in the new institution would be to source a permanent management team that is acceptable to the bank's stakeholders and the FDIC.

A second, and equally important, aspect of the investor's proposition should be to assure that the fund manager / adviser has significant and relevant experience in the banking arena. The fund adviser should also be independent of the management team, both in terms of perception and subject to FDIC diligence.

In the absence of private investment in the banking system, the FDIC will necessarily be responsible for supporting potential hundreds of failing institutions. A sound, equitable plan to attracting private funding will serve to bolster the overall banking system. Even if some of the "rescued banks" ultimately fail, the number will be substantially lower, and failure will occur further into the future, enabling the industry to restore itself to stability and profitability with less government support.

In closing, the current proposals as put forward in the Statement are unlikely to achieve the desired objectives of the FDIC insofar as attracting responsible, long-term private investors that bring a view towards stabilizing the banking sector. We have respectfully recommended areas where we believe the guidance should be re-visited and revised, and would welcome the opportunity to discuss any aspect of the foregoing, as required.

With our distinctive view and deep experience serving the banking and private equity sectors, we hope that you will welcome our ideas in the spirit in which they were given, and not hesitate to contact us. Alvarez & Marsal stands ready to help you envision the path forward.

Yours Truly,

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